REPRESENTATIVE FOR PETITIONERS:
Robert A Beutler, Jr., *pro se*

REPRESENTATIVE FOR RESPONDENT:
Brian Cusimano, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Robert A. Beutler, Jr. & Laurel Beutler,	)	Petition No.: 76-010-13-1-5-00024
	)	
Petitioners,	)	Parcel No.: 76-10-33-110-228.000-010
	)	
v.	)	County: Steuben
	)	
Steuben County Assessor,	)	Township: Otsego
	)	
Respondent.	)	Assessment Year: 2013

Appeal from the Final Determination of the
Steuben County Property Tax Assessment Board of Appeals

October 14, 2014

FINAL DETERMINATION

The Indiana Board of Tax Review (Board), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. The Respondent had the burden to prove that the subject property's March 1, 2013, assessment was correct. Did the Respondent prove the 2013 assessment was correct?

PROCEDURAL HISTORY

2. The Petitioners initiated their 2013 appeal with the Steuben County Assessor on July 17, 2013. On March 25, 2014, the Steuben County Property Tax Assessment Board of Appeals (PTABOA) issued its determination lowering the assessment, but not to the level the Petitioners requested. On May 1, 2014, the Petitioners timely filed a Form 131 Petition with the Board.

3. On July 17, 2014, the Board's administrative law judge Patti Kindler (ALJ) held a hearing on the petition. Neither the Board nor the ALJ inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. County consultant Joshua Pettit, certified appraiser William Schnepf, Jr., Robert A. Beutler, Jr., and Laurel L. Beutler were sworn as witnesses.

5. The Petitioners submitted the following exhibits:[1]

Petitioner Exhibit 1:	Property record card (PRC) for the Boyd property, parcel number 76-10-33-110-203.000-010,
Petitioner Exhibit 2:	PRC for the Birch property, parcel number 76-10-33-110-204.000-010,
Petitioner Exhibit 3:	PRC for the Johnston property, parcel number 76-10-33-110-206.000-010,
Petitioner Exhibit 4:	PRC for the Thompson property, parcel number 76-10-33-110-208.000-010,
Petitioner Exhibit 5:	PRC for the Link property, parcel number 76-10-33-110-209.000-010,
Petitioner Exhibit 6:	PRC for the Bragg property, parcel number 76-10-33-110-210.000-010,
Petitioner Exhibit 7:	PRC for the Rosswurm property, parcel number 76-10-33-110-211.000-010,
Petitioner Exhibit 8:	PRC for the D. Smith property, parcel number 76-10-33-110-212.000-010,
Petitioner Exhibit 9:	PRC for the Meek property, parcel number 76-10-33-110-213.000-010,

[1] Mr. Beutler withdrew Petitioner Exhibit 31 and 32 at the hearing.

Petitioner Exhibit 10:	PRC for the D. Smith property, parcel number 76-10-33-110-214.000-010,
Petitioner Exhibit 11:	PRC for the D. Smith property, parcel number 76-10-33-110-215.000-010,
Petitioner Exhibit 12:	PRC for the Mason property, parcel number 76-10-33-110-216.000-010,
Petitioner Exhibit 13:	PRC for the Sutton property, parcel number 76-10-33-110-217.000-010,
Petitioner Exhibit 14:	PRC for the Yoder property, parcel number 76-10-33-110-218.000-010,
Petitioner Exhibit 15:	PRC for the D. Smith property, parcel number 76-10-33-110-219.000-010,
Petitioner Exhibit 16:	PRC for the Bragg property, parcel number 76-10-33-110-220.000-010,
Petitioner Exhibit 17:	PRC for the Quick property, parcel number 76-10-33-110-221.000-010,
Petitioner Exhibit 18:	PRC for the Simanton property, parcel number 76-10-33-110-222.000-010,
Petitioner Exhibit 19:	PRC for the Towns property, parcel number 76-10-33-110-223.000-010,
Petitioner Exhibit 20:	PRC for the Justice property, parcel number 76-10-33-110-224.000-010,
Petitioner Exhibit 21:	PRC for the Connin property, parcel number 76-10-33-110-225.000-010,
Petitioner Exhibit 22:	PRC for the DeBrunner property, parcel number 76-10-33-110-226.000-010,
Petitioner Exhibit 23:	PRC for the Kelley property, parcel number 76-10-33-110-227.000-010,
Petitioner Exhibit 24:	2011 PRC for the subject property,
Petitioner Exhibit 25:	PRC for the Miller property, parcel number 76-10-33-110-230.000-010,
Petitioner Exhibit 26:	PRC for the Sechler property, parcel number 76-10-33-110-231.000-010,
Petitioner Exhibit 27:	PRC for the Gnagy property, parcel number 76-10-33-110-232.000-010,
Petitioner Exhibit 28:	PRC for the Schaar property, parcel number 76-10-33-110-233.000-010,
Petitioner Exhibit 29:	PRC for the Hopkins property, parcel number 76-10-33-110-234.000-010,
Petitioner Exhibit 30:	PRC for the Grieser property, parcel number 76-10-33-110-235.000-010,
Petitioner Exhibit 33:	Copy of Ind. Code § 6-1.1-4-18.5, Ind. Code § 6-1.1-4-19.5, Ind. Code § 6-1.1-4-20 and Ind. Code § 6-1.1-4-21,

Petitioner Exhibit 34:	PRC for Baumgartner property, parcel number 76-10-33-140-126.000-010.

6. The Respondent submitted the following exhibits:

Respondent Exhibit A:	Appraisal of the subject property prepared by William Schnepf, Jr., with an effective date of March 1, 2013,
Respondent Exhibit B:	PRC for the subject property,
Respondent Exhibit C:	Memorandum from the Department of Local Government Finance (DLGF) regarding 2013 ratio studies, dated January 7, 2013.

7. The following items are recognized as part of the record:

Board Exhibit A:	Form 131 petition with attachments,
Board Exhibit B:	Notice of Hearing, dated June 3, 2014,
Board Exhibit C:	Hearing sign-in sheet,
Board Exhibit D:	Notice of Appearance by attorney Brian Cusimano,
Board Exhibit E:	Certificate of Service from Robert Beutler, Jr., dated June 30, 2014.

8. The subject property is a single-family home located at 2020 Lane 150, Hamilton Lake in Hamilton.

9. The PTABOA determined that the March 1, 2013, assessment is $204,000 for land and $134,100 for improvements, for a total value of $338,100.

10. On their Form 131, the Petitioners requested an assessed value of $204,000 for land and $100,000 for improvements, for a total value of $304,000. However, at the hearing the Petitioners argued the only issue under appeal is the neighborhood factor applied to the property, and they "have no objection to the value of the property."

OBJECTIONS

11. The parties made numerous objections at the hearing. First, Mr. Cusimano objected to the Petitioners' request for the separation of the Respondent's witnesses at the hearing. Mr. Cusimano argued that a request for the separation of witnesses is unusual and absent any unusual circumstances there was nothing to justify it. The ALJ determined that no

hardship would be created by separating the witnesses. Therefore, the ALJ overruled Mr. Cusimano's objection, and granted Mr. Beutler's request.

12. Mr. Beutler objected to Respondent Exhibit C, a DLGF memorandum, on the grounds he did not receive a copy of the exhibit prior to the hearing. Mr. Cusimano argued that the DLGF memorandum is public record. The ALJ took Mr. Beutler's objection under advisement. The Board's procedural rules clearly state that each party must provide all other parties a list of the witnesses and exhibits it intends to offer at least 15 business days before any administrative hearing and copies of documentary evidence at least five business days before the hearing. 52 IAC 2-7-1(b). A DLGF memorandum is not technically evidence. The DLGF is the state agency responsible for publishing Indiana's property tax assessment rules. Not only does the DLGF promulgate those rules, it issues memorandums to further explain them. Often, the Board takes official notice of not only the DLGF's promulgated rules, but also the related memorandums, as those memorandums are readily available to the public on the DLGF's website. Mr. Beutler's objection is overruled, and the exhibit is admitted. The Board notes, however, that the admittance of this exhibit has no effect on the outcome of the appeal.

13. Mr. Beutler also objected to Respondent Exhibit A, the Schnepf appraisal, as well as Mr. Schnepf's related testimony, claiming both are irrelevant and immaterial. Mr. Beutler stated the appraisal went beyond the scope of the only issue listed on their appeal form, the neighborhood factor. Mr. Cusimano argued that by filing an appeal petition with the Board, the Petitioners challenged the assessed value of the property. At the hearing, the ALJ took Mr. Beutler's objection to the appraisal and testimony under advisement.

14. The contention that the Respondent can only discuss the "neighborhood factor" is an argument that is central to the Petitioners' case. The Board discusses the merits of that argument at length below. At best, Mr. Beutler's objection to the Schnepf appraisal and supporting testimony goes to the weight of the evidence, rather than its admissibility. Thus, Mr. Beutler's objections are overruled, and both Mr. Schnepf's appraisal and his accompanying testimony are admitted.

15. Next, Mr. Beutler objected to Mr. Cusimano's re-direct of Mr. Schnepf, arguing that the Petitioners did not question Mr. Schnepf on the quantity of sales he used during cross-examination. Mr. Cusimano argued that his direct examination was related to the sales and listings Mr. Schnepf used. The ALJ took the objection under advisement. The Board finds that no harm was done by Mr. Cusimano's line of questions, and the questions were within the scope of Mr. Beutler's cross examination. Thus, the Board overrules Mr. Beutler's objection to Mr. Cusimano's questions regarding the sales he utilized.

16. Mr. Beutler also objected to Mr. Schnepf's testimony because the Respondent did not comply with Ind. Code § 6-1.1-4-18.5 in hiring him to perform his appraisal for the appeal. Mr. Cusimano argued this section of the Indiana Code was irrelevant. The ALJ took the objection under advisement. Indiana Code § 6-1.1-4-18.5(a) states:

> A county assessor may not use the services of a professional appraiser for *assessment or reassessment purposes without a written contract*. The contract used must be either a standard contract developed by the department of local government finance or a contract that has been specifically approved by the department. The department shall ensure that the contract:
>
> > (1) includes all of the provisions required under section 19.5(b) of this chapter; and
> > (2) adequately provides for the creation and transmission of real property assessment data in the form required by the legislative services agency and the division of data analysis of the department.

Ind. Code § 6-1.1-4-18.5(a) (emphasis added). What Ind. Code § 6-1.1-4-18.5(a) does not say is paramount here. The statute does not state that the appraiser must be under contract if hired for appeal purposes. The record is clear that the Respondent hired Mr. Schnepf to develop an appraisal for the appeal at hand. Therefore, Ind. Code § 6-1.1-4-18.5, relating to the assessment or reassessment of properties, does not apply here. Mr. Beutler's objection to Mr. Schnepf's testimony is overruled.

17. Mr. Beutler also moved for a "directed verdict" before the Respondent had completed his case. Mr. Beutler claimed that the Respondent failed to offer any evidence to meet its

burden of proof. Mr. Cusimano argued that he had not presented his entire case yet. The ALJ took Mr. Beutler's motion under advisement. A directed verdict is:

> [a] ruling by a trial judge taking a case from the jury because the evidence will permit only one reasonable verdict.

See Black's Law Dictionary (9th edition, 2009). Mr. Beutler failed to direct the Board to any authority to support the imposition of a directed verdict at an administrative hearing, which is subject to less formal proceedings without a jury. Thus, the Board denies Mr. Beutler's motion.

18. While seeking a directed verdict, Mr. Beutler objected to "being required to prove anything." He argued he was "not required to prove anything" in the hearing because the burden was on the Respondent. Again, however, the Respondent had not yet completed its case. Further, it seems Mr. Beutler was not cognizant of the fact that if the Respondent met its burden the burden would then shift to the Petitioners to rebut the evidence. The Board finds Mr. Beutler's objection is merely argument as to the merits of the Respondent's case.

19. Several other objections were noted at hearing and the ALJ either sustained or the parties withdrew:

- Mr. Beutler objected to one of Mr. Cusimano's questions to his witness during direct examination, arguing it was a "leading question." The ALJ properly sustained the objection and Mr. Cusimano reworded his question without further objection.

- Mr. Beutler made an editorial comment objection to a statement Mr. Cusimano made agreeing with Mr. Pettit's response to Mr. Cusimano's direct examination. Mr. Cusimano withdrew his comment and the ALJ allowed him to return to his examination of the witness.

- Mr. Cusimano objected to Mr. Beutler's cross-examination of Mr. Pettit, arguing that Mr. Beutler was testifying and not questioning the witness. The ALJ properly

sustained Mr. Cusimano's objection and cautioned Mr. Beutler to save his testimony for the Petitioners' case-in-chief.

- Finally, Mr. Cusimano objected to Mr. Beutler's cross-examination of Mr. Schnepf, arguing that Mr. Beutler was beyond the scope of direct examination. The ALJ allowed Mr. Beutler to continue questioning after Mr. Beutler explained that further questioning of the witness would show the relevance of the question. Mr. Beutler continued his round of questioning without further objection from Mr. Cusimano.

PETITIONERS' CONTENTIONS

20. The neighborhood factor applied to the assessment is incorrect. That is the sole issue in this appeal. The Respondent failed to offer any evidence that the subject property's neighborhood factor is correct. Instead, the Respondent focused on the value of the subject property. The Respondent's burden was not to show the value of the subject property, but to substantiate the increase in the neighborhood factor from 1.19% to 1.48%. Neither the value of the land nor the value of the improvements is at issue in this appeal. *R. Beutler argument.*

21. The Board's hearing notice states only the issues listed on the petition filed with the Board, or an amended petition filed with the Board within 30 days, will be considered at the appeal hearing. Again, the only issue listed on the Form 131 petition was the neighborhood factor. The Respondent should not have an unfettered right to increase the neighborhood factor from 1.19% in 2012 to 1.48% in 2013, without offering any support or foundation for that increase. *R. Beutler argument; Bd. Ex. B.*

22. At the previous PTABOA hearing, the Respondent's witness, Mr. Pettit, stated there were no sales in the immediate two years preceding the assessment date that would increase the neighborhood factor. Further, Mr. Pettit had ample time to assemble his ratio study for the Board's hearing; however, he failed to do so. *R. Beutler argument.*

23. An exhibit presented by the Respondent states that the assessing official must use sales of properties from January 1, 2012, to March 1, 2013, for ratio studies applicable to the 2013 assessment year. According to the property record cards presented by the Petitioners, there were no sales in the subject neighborhood to support an increase in the neighborhood factor in the required timeframe. *R. Beutler testimony; Pet'r Ex. 1-30; (referencing Resp't Ex. C).*

24. Finally, the appraisal submitted by the Respondent is flawed. First, the appraisal is irrelevant to the issue of neighborhood factor. The appraisal does not address the neighborhood factor, nor does it provide any foundation for sales in the neighborhood in the two years prior to March 1, 2013. In fact, two of the sales relied on occurred after the March 1, 2013, assessment date. Further, Mr. Schnepf failed to utilize the sale of a property located at 2280 LN 150, directly behind the subject property, and he admitted he may have overlooked it. That property sold for $340,000 on June 7, 2012, and is $48,400 less than its 2012 assessment. Mr. Schnepf also failed to make any adjustments for the fact that the subject property is located on a narrow part of the lake. One of the purportedly comparable properties utilized is located on an "open" part of the lake. Finally, Mr. Schnepf appraised the land at $170,000. It is currently assessed at $204,000 and the Respondent has not reduced that assessment in accordance with the appraisal. *Beutler argument; Pet'r Ex. 34 (referencing Resp't Ex. A).*

RESPONDENT'S CONTENTIONS

25. The subject property is correctly assessed. By appealing the assessment, the Petitioners have challenged the value of the subject property. In this appeal, the Respondent has the burden to prove the 2013 assessment is correct. In an effort to prove the assessment is correct, the Respondent provided a Uniform Standards of Professional Appraisal Practice (USPAP) compliant appraisal prepared by William Schnepf, Jr. A USPAP appraisal has been held by the Indiana Tax Court to be some of the best evidence to prove the value of a property. *Cusimano argument (citing Kooshtard Property VI, LLC v. the White River Twp. Ass'r*, 836 N.E.2d 501, at 506 (Ind. Tax Ct. 2005)*; Resp't Ex. A.*

26. Mr. Schnepf valued the subject property at $350,000 as of March 1, 2013. He relied on the cost approach and sales-comparison approaches in performing his retrospective appraisal. *Schnepf testimony; Resp't Ex. A.*

27. In his cost approach, Mr. Schnepf determined the underlying site value for the subject property through the use of comparable sales. He used both the price per front-foot and the price per square-foot as units of measure to assure reliability in valuing the land. He determined the land value was $170,000. Next, in valuing the improvements, Mr. Schnepf relied on Marshall Valuation Service and the Marshall and Swift Residential Cost Handbook. He then used retrospective cost multipliers to take his improvement value back to the March 1, 2013, assessment date. He depreciated the improvements based on the age-life method derived from similar homes on the market. Finally, he added the subject property's depreciated improvement value, the site improvements and the land value, to arrive at his total opinion of value of $350,500 under the cost approach. *Schnepf testimony; Resp't Ex. A.*

28. In performing his sales-comparison approach, Mr. Schnepf explained that he selected comparable, arm's-length sales of lakefront properties with similar utility and use from a regional multiple listing service and the Steuben County database. Even though the market was somewhat "flat," he located enough sales to render an opinion of value. He then adjusted the sale by utilizing dollar-for-dollar adjustments to account for differences between the comparable properties and the subject property. Adjustments were made to the comparable properties to account for differences in site, age, amount of gross living area, number of baths, air conditioning, car storage, fireplaces and porches. Under this approach, Mr. Schnepf determined a value of $355,000. Mr. Schnepf's final opinion of value was $350,000 for the subject property. *Schnepf testimony; Resp't Ex. A.*

29. The neighborhood factor is just one component of the assessment. While the Petitioners argue that the Respondent can only address the neighborhood factor, case law suggests otherwise. The Indiana Tax Court ruled that questioning how the assessment was

reached is not a proper way to meet a burden in an appeal. *Cusimano argument (citing Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674 (Ind. Tax Ct. 2006)).

BURDEN OF PROOF

30. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r,* 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs,* 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.

31. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

32. Second, Ind. Code section 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15." Under those circumstances, "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d). This change is effective March 25, 2014, and has application to all appeals pending before the Board.

33. At the hearing both parties agreed that the 2013 assessed value increased by more than 5% over the 2012 value. In fact, the assessed value increased from $304,000 to $338,100. Thus, according to Ind. Code § 6-1.1-15-17.2, the Respondent has the burden to prove the 2013 assessment is correct. To the extent that the Petitioners seek an assessment below $304,000 they bear the burden of proving any lower value.

ANALYSIS

34. Real property is assessed for its "true tax value," which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales-comparison, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id*. Assessing officials primarily use the cost approach. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. *Id*. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed valuation. Such evidence may include actual construction costs, sales information regarding the subject property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

35. Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2013 assessments, the assessment and valuation date were March 1, 2013. *See* Ind. Code § 6-1.1-4-4.5(f).

36. The most effective method to establish value can be through the presentation of a market value-in-use appraisal, completed in conformance with USPAP. *Kooshtard Property VI,* 836 N.E.2d at 506 n. 6. The Respondent, through Mr. Schnepf's USPAP compliant appraisal, offered substantial, probative evidence regarding the subject property's market

value-in-use. Mr. Schnepf valued the subject property using two approaches to value, the cost and sales-comparison approaches. He estimated the value at $350,000 as of March 1, 2013. Through this USPAP conforming appraisal, the Respondent made a prima facie case that the correct value is at least $338,100. The Board now turns to the Petitioners' evidence and arguments.

37. The Petitioners argue that the only issue they are contesting is the neighborhood factor, increasing from 1.19% in 2012 to 1.48% in 2013. Moreover, they contend that because this is the only issue they raised on their Form 131, the Respondent is precluded from defending the assessment with any evidence relating to value. However, in making this argument, the Petitioners not only misunderstand the burden of proof placed on the Respondent, but they also disregard relevant case law.

38. True, the Respondent has the burden of proof in this case. "Under this section, the county assessor or township assessor making the assessment has the burden of *proving that the assessment is correct* in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b) (emphasis added). The Petitioners offered no authority, nor is the Board aware of any, requiring the Respondent to prove that the neighborhood factor, or any of the nuts and bolts methodology used to compute the assessment, is correct. Further, the burden did not shift to the Respondent due to any change in the neighborhood factor. The burden shifted because the *assessment* increased by more than 5%.

39. Consequently, the Respondent defended the assessment by offering market-based evidence through a certified appraisal. The Respondent did nothing contrary to law by addressing the issue of value. Indeed, the Respondent addressed the exact issue that the statute requires.

40. The Petitioners offered nothing to rebut the Respondent's value conclusion. In fact, Mr. Beutler testified repeatedly that he agrees with the assessed value. The Petitioners' sole

argument is that the change in the neighborhood factor from 2012 to 2013 was unsupported by any sales in the neighborhood during the relevant timeframe.

41. While 52 IAC 2-5-2 instructs taxpayers that only the issues listed on the petition or an amended petition filed with the Board will be considered for review, it does not imply that a single component of the overall true tax value, such as the neighborhood factor, can be brought forth without considering a property's overall market value. In fact, Indiana Tax Court has held otherwise. *See Eckerling v. Wayne Twp. Ass'r,* 841 N.E.2d 674 (Ind. Tax Ct. 2006). In *Eckerling,* the Tax Court stated that the calculation of cost under the Guidelines is merely the starting point for determining the true tax value of an improvement or structure.

> [t]he purpose of [the Manual/Guidelines] is to accurately determine the "True Tax Value" . . . not to mandate that any specific assessment method be followed . . . no technical failure to comply with the procedures of a specific assessing method violates this rule so long as the individual assessment is a reasonable measure of "True Tax Value[,] and failure to comply with the . . . Guidelines . . . does not in itself show that the assessment is not a reasonable measure of "True Tax Value[.]"

See Eckerling, 841 N.E.2d at 674; *see also* 50 IAC 2.3-1-1(d); *P/A Builders & Developers, LLC v. Jennings Co. Ass'r,* 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006); *Kooshtard Prop. VI,*836 N.E.2d at 501.

42. Further, The International Association of Assessing Official's Standard on Ratio Studies, that 50 IAC 27-1-4 incorporates by reference, says:

> Assessors, appeal boards, taxpayers, and taxing authorities can use ratio studies to evaluate the fairness of funding distributions, the merits of class action claims, or the degree of discrimination . . . However, *ratio study statistics cannot be used to judge the level of appraisal of an individual parcel.*

INTERNATIONAL ASSOCIATION OF ASSESSING OFFICIALS STANDARD ON RATIO STUDIES VERSION 17.03 Part 2.3 (Approved by IAAO Executive Board 07/21/2007) (italics in original).

43. The Petitioners failed to make a case by simply contesting methodology. *Eckerling*, 841 N.E.2d at 677. To successfully make a case, the Petitioners needed to show that the assessment does not accurately reflect the subject property's market value-in-use. *Id.; See also P/A Builders & Developers, LLC*, 842 N.E. 2d at 900 (explaining the proper focus in arriving at a correct assessment is not on methodology, but rather, on what the correct value actually is).

44. Even if the Petitioners could have made a case by proving only that the neighborhood factor was incorrect, they failed. Specifically, the Petitioners contend that the factor is unsupported because no sales took place in the subject property's neighborhood during the year in question. Inherent in that contention is the incorrect assertion that the Respondent is precluded from using sales that occurred more than a year removed from the assessment date. The Manual and related memorandum states, "[a] longer time period may be required to produce a representative sample in some counties; however, no more than 5 years of sales may be used in the ratio study." *Resp't Ex. C* at 2-3, *referring to* MANUAL at 2 (2013 update).

45. The Petitioners also attempted to rebut Mr. Schnepf's appraisal. Specifically, the Petitioners questioned Mr. Schnepf's choice of sales, and why he did not rely on a 2012 auction sale located near the subject property in his sales-comparison approach to value. They also questioned why he did not make adjustments to the comparables they claim are located on a more "open" part of the lake.

46. Impeaching a value estimate from an expert witness requires more than simply labeling certain items as questionable. Here, Mr. Schnepf chose comparable properties and made adjustments for differences he deemed appropriate, and this is well within the expertise of a licensed appraiser. The Petitioners offered no evidence of specific errors that would

have led to a different value conclusion. Moreover, the Petitioners offered no market-based information of their own. In fact, to the extent that the Petitioners addressed value, they agreed with the current assessment.

47. The Board has the authority to raise the Petitioners' 2013 assessment to the value indicated on the Respondent's appraisal, but will not do so in this case. The Respondent's appraisal supports at least the value determined by the PTABOA.

SUMMARY OF FINAL DETERMINATION

48. The Board finds for the Respondent. The 2013 assessment will not be changed.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

_____
Chairman, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.